

No. 200,681-7

SANDERS, J. (concurring)—Mr. Paul King was entitled to notice of Mr. Mark Maurin’s deposition. ELC 5.5(a) provides:

- (a) **Procedure.** Before filing a formal complaint, disciplinary counsel may depose either a respondent lawyer or a witness, or issue requests for admission to the respondent. To the extent possible, CR 30 or 31 applies to depositions under this rule. CR 36 governs requests for admissions.

CR 30(b)(1) requires no less than five days’ notice “to every other party to the action and to the deponent.” ELC 5.5(a) provides this rule is applicable “[t]o the extent possible” So if it is not “possible” to serve a party to the action because the targeted lawyer has not yet received a formal complaint, then I can think of no reason why he should not be given notice of the deposition and an opportunity to participate; it is only fair. I have found no precedent whatsoever that supports a different reading of this rule.

Nevertheless, because the deposition was not used in the proceeding and Mr. Maurin did not testify, I do not see how this procedural error could in any way affect the final result.

Therefore I concur.

AUTHOR:

Justice Richard B. Sanders

WE CONCUR:
